



FECA

Florida Electric Cooperatives Association, Inc.

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July 21, 1997

Office of Secretary
Federal Communications Commission
Washington, DC 20554

RE: CS Docket No. 97-141

Dear Sir/Madam:

Please accept for filing, an original and four copies of the Comments of the Florida Electric Cooperatives Association, Inc. in the above-referenced docket.

Thank you for your assistance in this matter.

Sincerely,

Michelle Hershel
Director of Regulatory Affairs

cc: Wallace F. Tillman, Chief Counsel NRECA

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Annual Assessment of the Status of)
Competition in Markets for the)
Delivery of Video Programming)

CS Docket No. 97-141

To: The Commission

COMMENTS OF THE
FLORIDA ELECTRIC COOPERATIVES ASSOCIATION, INC.

Pursuant to Section 1.415 and 1.419 of the Federal Communication Commission's (FCC) Rules, the Florida Electric Cooperatives Association, Inc. (FECA) hereby submits its comments on the Notice of Inquiry, FCC 97-194, adopted June 3, 1997 and released June 10, 1997, in the above-captioned proceeding in which the FCC seeks to gather information, data and public comment necessary to prepare the fourth annual report (1997 Competition Report) on competition in markets for the delivery of video programming.

FECA is the professional, trade organization for 17 consumer-owned electric cooperatives operating in Florida. FECA's member-cooperatives - the 15 electric distribution cooperatives and their two generation and transmission cooperatives- provide low-cost electric energy and related services to approximately 700,000 Floridians. Florida electric cooperatives cover more than 65 percent of the state's land mass while serving 10 percent of Florida's population.

Comments

The FCC stated in the above-mentioned Notice of Inquiry, that there are ten specific changes from the Telecommunications Act of 1996 (Public Law 104-104) relating to competition in video markets on which comments would be useful. FECA hereby provides comments on the eighth listed change, "Pole Attachment Regulation" which states:

Pole Attachment Regulation. Section 703 of the 1996 Act expands the application of the pole attachment rate formula to include telecommunications carriers in addition to cable systems. Section 224(a)(4) of the Communications Act now defines "pole attachment" as "any attachment by a cable system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a

utility.” However, poles, ducts, conduits, or rights-of-way owned or controlled by any railroad, cooperative, or any federal or any state entity are not considered utilities for this purpose and are exempt from this regulation. We seek comment on the effect on competition that this exemption has on entities offering telecommunications services, including video services. In particular, we seek information to demonstrate whether the rates charged for pole attachments by cooperatives and municipalities, especially in rural areas, impede or promote competition.

FECA contends that Congress prefers, and it is their intent, that when setting pole attachment rates, utilities should negotiate between and among themselves. The Telecommunications Act of 1996 specifically states that:

“The Commission shall, no later than 2 years after the date of enactment of the Telecommunications Act of 1996, prescribe regulations in accordance with this subsection to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services, **when the parties fail to resolve a dispute over such charges.**” (*Emphasis added*)

It is clear that all pole attachment rates are now subject to negotiation prior to regulation by a state or federal regulatory body.

Historically, in Florida, electric, telecommunication and cable utilities have negotiated reasonable pole attachment rates. Not only do cable and telecommunication utilities attach to electric poles but electric utilities also attach to other utilities’ poles. If an electric, telecommunication, or cable utility determines that the negotiated rate is not the most economically efficient means of distributing its service, other options, such as installing their own poles or placing their facilities underground, are available.

Poles owned by Florida electric cooperatives are private property and must be maintained in a safe and operable condition. As such, the utility owning the poles must have the final say over what attachments may be placed on their facilities and in what manner. Along with a reasonable rate for the privilege of using the privately owned pole, costs associated with maintenance and preservation of the private property are determined when utilities negotiate pole attachment rates.

FECA and its member-cooperatives are opposed to regulation of pole attachments at any level of government and as members of the National Rural Electric Cooperative Association (NRECA) adopt their recently approved resolution strongly opposing the regulation of pole attachments:

REGULATION OF POLE ATTACHMENTS--Regardless of any legislation which has been or may be passed vesting regulatory authority over pole attachments with the Federal Communications Commission, it is our position that such legislation, whether it includes rural electric cooperatives or not, is bad legislation, and

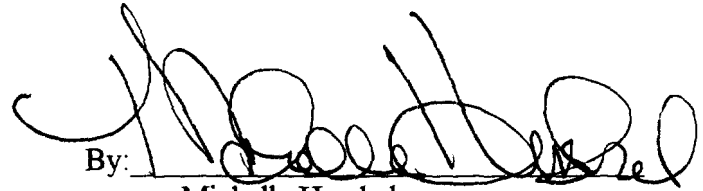
pole attachment matters should be a matter of contractual arrangements between interested parties.

We must take all necessary measures to oppose any mandated pole attachment regulations.

In the spirit of NRECA's resolution, the above comments by FECA and the Florida electric cooperatives are the first step in actively protecting how pole attachment rates are regulated. Thank you for the opportunity to provide comments on this issue.

Respectfully submitted,

FLORIDA ELECTRIC COOPERATIVES
ASSOCIATION, INC.

By: 

Michelle Hershel
FECA Director of Regulatory Affairs